

**Jim Odiorne**

**From:** Jim Odiorne  
**Sent:** Tuesday, October 14, 2003 3:07 PM  
**To:** 'yori.milo@premera.com'  
**Cc:** Mike Watson; Jim Tompkins; John Hamje; 'Andrew Taktajian'  
**Subject:** proposed negotiations

Yori,

Thank you for your response to my 10/10/03 e-mail concerning possible negotiation of issues raised by the OIC consultants. I appreciate your acknowledgement of my concerns and your suggestions for the negotiation process.

You propose that the OIC Staff and Premera negotiate "conditions of approval" that would be recommended to the Commissioner for inclusion in an order approving the transaction. I am not aware that the OIC Staff has determined to recommend approval of the application or that the Commissioner has indicated that he has made any determination regarding the merits in this matter. In fact, based upon my review of the consultants' draft reports, I cannot imagine how the OIC Staff can recommend to the Commissioner that the application be approved without substantial and significant amendment of the Form A. Therefore, your proposal is at least premature even if it were contemplated by RCW 48.31C.030(5)(a)(ii)(C). The proposal is designed to result in an amendment of the Form A but calling it by a different name. In all the years of my experience in insurance regulation, I have never seen this provision used as a substitute for amendment of a Form A. It appears to be an attempt by Premera to circumvent the spirit if not the letter of the Commissioner's Thirteenth Order when he established October 15<sup>th</sup> as the deadline for submitting amendments to the Form A and to avoid the consequences of failing to comply with the Order.

Assuming for the sake of argument only that the negotiations you propose do not constitute a prelude to amendment of the Form A, your response suggests the ability of the OIC consultants to file supplemental reports that would address agreements reached through negotiation. You also responded with a suggestion that the negotiation process, including the filing of supplemental reports could be completed by mid-November.

I see nothing in any of the Commissioner's case management orders (or in the personal service contracts with the consultants) that contemplates or provides for supplemental reports by OIC consultants, or by anyone else. Equally as important, negotiations going through mid-November as you suggested, would, under current scheduling, effectively preclude the parties from obtaining expert reports and designating fact witnesses in response to the supplemental reports. Your proposed process would also significantly and probably adversely impact the parties' access to meaningful discovery and adequate time for preparation of testimony on the supplemental reports as well as severely restrict the ability of members of the public to fully comprehend the transaction crippling the public's right to supply appropriate input. It does not take into account the logistical and timing issues relating to redaction of confidential information and the scanning of the redacted documents for posting to the OIC web site for public access.

As I informed you when we met in Mike Watson's office on October 7, 2003, OIC Staff and OIC consultants have a first priority of fully and adequately preparing for hearing under the current schedule. To the extent possible, considering that priority and my concerns for a public process and a sustainable order, I am willing to meet with Premera for the purpose of simplifying the issues for the hearing. To that end, I believe we can work within the following schedule:

**By 3 pm, Friday, October 17 -** Premera will identify three groups of issues: (1) acceptable to Premera without negotiation (2) totally unacceptable to Premera (3) considered by Premera as offering an opportunity for meaningful discussion.

**By 3 pm, Monday, October 20 -** OIC will identify those issues from group 3 that it agrees appear to offer an opportunity for meaningful discussion. Until I have an opportunity to review Premera's list of issues, I will not be

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**EXHIBIT** 

able to determine whether OIC will consider all group 3 issues as susceptible of meaningful discussion.

**Tuesday, Wednesday, Thursday,**

**October 21-23** - OIC will make arrangements for OIC consultants to be available as necessary for discussions. It may not be necessary for OIC consultants to be involved in every issue from group 3 that Premera and OIC agree are susceptible for meaningful discussion.

**By 3 pm, Friday, October 24** - OIC and Premera will furnish OIC consultants and parties a memorandum memorializing results of the discussions for the purpose of incorporating the results into the consultants' final reports. This is contingent upon no significant additional time being required by the consultants to revise the reports in conformity with any changes.

**Monday, October 27** - OIC consultants submit final reports including any revisions resulting from the discussions.

I fully realize that this is a very aggressive schedule, but it is the only way we can expect to provide a meaningful public process, develop a complete and sufficient record, and meet the Commissioner's current schedule. I look forward to receiving Premera's grouped list of issues.

Jim Odiorne